

HOUSE BILL No. 1055

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-1; IC 35-40-13-2; IC 35-50-2-9.

Synopsis: Victim rights. Specifies that a court may not sentence a defendant convicted of committing a crime until: (1) the court informs the victim of the crime or the victim representative of the victim's or victim representative's right to make a statement concerning the crime and the sentence; and (2) the court considers any oral or written statement made by the victim or victim representative. Makes conforming amendments under the law concerning: (1) victim rights by requiring a court to appoint a lawful representative who is not a witness if a victim is incompetent, deceased, or otherwise incapable of designating another person to act in the victim's place; and (2) sentencing for murder by requiring a court to receive evidence of the crime's impact on members of the victim's family in making the final determination of the sentence .

Effective: July 1, 2001.

Duncan

January 8, 2001, read first time and referred to Committee on Courts and Criminal Code.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1055

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. (a) As used in this
3 chapter, "victim representative" means a person designated by a
4 sentencing court who is:
5 (1) a spouse, parent, child, sibling, or other relative of; or
6 (2) a person who has had a close personal relationship with;
7 the victim of a felony who is deceased, incapacitated, or less than
8 eighteen (18) years of age.
9 (b) Upon entering a conviction, the court shall set a date for
10 sentencing within thirty (30) days, unless for good cause shown an
11 extension is granted. If a presentence report is not required, the court
12 may sentence the defendant at the time the judgment of conviction is
13 entered. However, the court may not pronounce sentence at that time
14 without:
15 (1) inquiring as to whether an adjournment is desired by the
16 defendant; and
17 (2) informing the victim **or the victim representative**, if present,



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of a victim's **or victim representative's** right to make a statement concerning the crime and the sentence.

When an adjournment is requested, the defendant shall state its purpose and the court may allow a reasonable time for adjournment.

(c) If:

(1) the state in the manner prescribed by IC 35-34-1-2.5 sought an increased penalty by alleging that the person was previously convicted of the offense; and

(2) the person was convicted of the subsequent offense in a jury trial;

the jury shall reconvene for the sentencing hearing. The person shall be sentenced to receive the increased penalty if the jury (or the court, if the trial is to the court alone) finds that the state has proved beyond a reasonable doubt that the person had a previous conviction for the offense.

(d) If the felony is nonsuspendible under IC 35-50-2-2, the judge shall order the defendant, if the defendant has previously been released on bail or recognizance, to be imprisoned in the county or local penal facility pending sentencing.

(e) Upon entering a conviction for a felony, the court shall designate a victim representative if the victim is deceased, incapacitated, or less than eighteen (18) years of age.

SECTION 2. IC 35-38-1-7.1, AS AMENDED BY P.L.183-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7.1. (a) In determining what sentence to impose for a crime, the court shall consider:

(1) the risk that the person will commit another crime;

(2) the nature and circumstances of the crime committed;

(3) the person's:

(A) prior criminal record;

(B) character; and

(C) condition;

(4) whether the victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age;

(5) whether the person violated a protective order issued against the person under IC 31-15 or IC 31-16 (or IC 31-1-11.5 before its repeal) or IC 34-26-2 (or IC 34-4-5.1 before its repeal); and

(6) any oral or written statement made by a victim of the crime **or victim representative**.

(b) The court may consider the following factors as aggravating circumstances or as favoring imposing consecutive terms of imprisonment:

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- (1) The person has recently violated the conditions of any probation, parole, or pardon granted to the person.
- (2) The person has a history of criminal or delinquent activity.
- (3) The person is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility.
- (4) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime.
- (5) The victim of the crime was less than twelve (12) years of age or at least sixty-five (65) years of age.
- (6) The victim of the crime was mentally or physically infirm.
- (7) The person committed a forcible felony while wearing a garment designed to resist the penetration of a bullet.
- (8) The person committed a sex crime listed in subsection (e) and:
 - (A) the crime created an epidemiologically demonstrated risk of transmission of the human immunodeficiency virus (HIV) and involved the sex organ of one (1) person and the mouth, anus, or sex organ of another person;
 - (B) the person had knowledge that the person was a carrier of HIV; and
 - (C) the person had received risk counseling as described in subsection (g).
- (9) The person committed an offense related to controlled substances listed in subsection (f) if:
 - (A) the offense involved:
 - (i) the delivery by any person to another person; or
 - (ii) the use by any person on another person;
 - of a contaminated sharp (as defined in IC 16-41-16-2) or other paraphernalia that creates an epidemiologically demonstrated risk of transmission of HIV by involving percutaneous contact;
 - (B) the person had knowledge that the person was a carrier of the human immunodeficiency virus (HIV); and
 - (C) the person had received risk counseling as described in subsection (g).
- (10) The person committed the offense in an area of a consolidated or second class city that is designated as a public safety improvement area by the Indiana criminal justice institute under IC 36-8-19.5.
- (11) The injury to or death of the victim of the crime was the result of shaken baby syndrome (as defined in IC 16-41-40-2).
- (12) Before the commission of the crime, the person administered

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to the victim of the crime, without the victim's knowledge, a sedating drug or a drug that had a hypnotic effect on the victim, or the person had knowledge that such a drug had been administered to the victim without the victim's knowledge.

(13) The person:

(A) committed trafficking with an inmate under IC 35-44-3-9; and

(B) is an employee of the penal facility.

(c) The court may consider the following factors as mitigating circumstances or as favoring suspending the sentence and imposing probation:

(1) The crime neither caused nor threatened serious harm to persons or property, or the person did not contemplate that it would do so.

(2) The crime was the result of circumstances unlikely to recur.

(3) The victim of the crime induced or facilitated the offense.

(4) There are substantial grounds tending to excuse or justify the crime, though failing to establish a defense.

(5) The person acted under strong provocation.

(6) The person has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime.

(7) The person is likely to respond affirmatively to probation or short term imprisonment.

(8) The character and attitudes of the person indicate that the person is unlikely to commit another crime.

(9) The person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained.

(10) Imprisonment of the person will result in undue hardship to the person or the dependents of the person.

(11) The person was convicted of a crime involving the use of force against a person who had repeatedly inflicted physical or sexual abuse upon the convicted person and evidence shows that the convicted person suffered from the effects of battery as a result of the past course of conduct of the individual who is the victim of the crime for which the person was convicted.

(d) The criteria listed in subsections (b) and (c) do not limit the matters that the court may consider in determining the sentence.

(e) For the purposes of this article, the following crimes are considered sex crimes:

(1) Rape (IC 35-42-4-1).

(2) Criminal deviate conduct (IC 35-42-4-2).

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(3) Child molesting (IC 35-42-4-3).

(4) Child seduction (IC 35-42-4-7).

(5) Prostitution (IC 35-45-4-2).

(6) Patronizing a prostitute (IC 35-45-4-3).

(7) Incest (IC 35-46-1-3).

(8) Sexual misconduct with a minor under IC 35-42-4-9(a).

(f) For the purposes of this article, the following crimes are considered offenses related to controlled substances:

(1) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(3) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(4) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(5) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(6) Possession of a controlled substance (IC 35-48-4-7).

(7) Dealing in paraphernalia (IC 35-48-4-8.5).

(8) Possession of paraphernalia (IC 35-48-4-8.3).

(9) Offenses relating to registration (IC 35-48-4-14).

(g) For the purposes of this section, a person received risk counseling if the person had been:

(1) notified in person or in writing that tests have confirmed the presence of antibodies to the human immunodeficiency virus (HIV) in the person's blood; and

(2) warned of the behavior that can transmit HIV.

SECTION 3. IC 35-38-1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 12. (a) Before imposing sentence, the court shall:

(1) advise the defendant or ~~his~~ **the defendant's** counsel and the prosecuting attorney of the factual contents and conclusions of the presentence investigation; or

(2) provide the defendant or ~~his~~ **the defendant's** counsel and the prosecuting attorney with a copy of the presentence report.

The court also shall offer the victim **or victim representative**, if present, an opportunity to make a statement concerning the crime and the sentence.

(b) The sources of confidential information need not be disclosed. The court shall furnish the factual contents of the presentence investigation or a copy of the presentence report sufficiently in advance of sentencing so that the defendant will be afforded a fair opportunity to controvert the material included.

SECTION 4. IC 35-40-13-2, AS ADDED BY P.L.139-1999, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



JULY 1, 2001]: Sec. 2. If a victim is incompetent, deceased, or otherwise incapable of designating another person to act in the victim's place, the court ~~may~~ **shall** appoint ~~upon request of the prosecuting attorney,~~ a lawful representative who is not a witness.

SECTION 5. IC 35-50-2-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging, on a page separate from the rest of the charging instrument, the existence of at least one (1) of the aggravating circumstances listed in subsection (b). In the sentencing hearing after a person is convicted of murder, the state must prove beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances alleged. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) The aggravating circumstances are as follows:

(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

- (A) Arson (IC 35-43-1-1).
- (B) Burglary (IC 35-43-2-1).
- (C) Child molesting (IC 35-42-4-3).
- (D) Criminal deviate conduct (IC 35-42-4-2).
- (E) Kidnapping (IC 35-42-3-2).
- (F) Rape (IC 35-42-4-1).
- (G) Robbery (IC 35-42-5-1).
- (H) Carjacking (IC 35-42-5-2).
- (I) Criminal gang activity (IC 35-45-9-3).
- (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

- (A) the victim was acting in the course of duty; or
- (B) the murder was motivated by an act the victim performed

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- 1 while acting in the course of duty.
- 2 (7) The defendant has been convicted of another murder.
- 3 (8) The defendant has committed another murder, at any time,
- 4 regardless of whether the defendant has been convicted of that
- 5 other murder.
- 6 (9) The defendant was:
- 7 (A) under the custody of the department of correction;
- 8 (B) under the custody of a county sheriff;
- 9 (C) on probation after receiving a sentence for the commission
- 10 of a felony; or
- 11 (D) on parole;
- 12 at the time the murder was committed.
- 13 (10) The defendant dismembered the victim.
- 14 (11) The defendant burned, mutilated, or tortured the victim while
- 15 the victim was alive.
- 16 (12) The victim of the murder was less than twelve (12) years of
- 17 age.
- 18 (13) The victim was a victim of any of the following offenses for
- 19 which the defendant was convicted:
- 20 (A) Battery as a Class D felony or as a Class C felony under
- 21 IC 35-42-2-1.
- 22 (B) Kidnapping (IC 35-42-3-2).
- 23 (C) Criminal confinement (IC 35-42-3-3).
- 24 (D) A sex crime under IC 35-42-4.
- 25 (14) The victim of the murder was listed by the state or known by
- 26 the defendant to be a witness against the defendant and the
- 27 defendant committed the murder with the intent to prevent the
- 28 person from testifying.
- 29 (15) The defendant committed the murder by intentionally
- 30 discharging a firearm (as defined in IC 35-47-1-5):
- 31 (A) into an inhabited dwelling; or
- 32 (B) from a vehicle.
- 33 (16) The victim of the murder was pregnant and the murder
- 34 resulted in the intentional killing of a fetus that has attained
- 35 viability (as defined in IC 16-18-2-365).
- 36 (c) The mitigating circumstances that may be considered under this
- 37 section are as follows:
- 38 (1) The defendant has no significant history of prior criminal
- 39 conduct.
- 40 (2) The defendant was under the influence of extreme mental or
- 41 emotional disturbance when the murder was committed.
- 42 (3) The victim was a participant in or consented to the defendant's

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- 1 conduct.
- 2 (4) The defendant was an accomplice in a murder committed by
- 3 another person, and the defendant's participation was relatively
- 4 minor.
- 5 (5) The defendant acted under the substantial domination of
- 6 another person.
- 7 (6) The defendant's capacity to appreciate the criminality of the
- 8 defendant's conduct or to conform that conduct to the
- 9 requirements of law was substantially impaired as a result of
- 10 mental disease or defect or of intoxication.
- 11 (7) The defendant was less than eighteen (18) years of age at the
- 12 time the murder was committed.
- 13 (8) Any other circumstances appropriate for consideration.
- 14 (d) If the defendant was convicted of murder in a jury trial, the jury
- 15 shall reconvene for the sentencing hearing. If the trial was to the court,
- 16 or the judgment was entered on a guilty plea, the court alone shall
- 17 conduct the sentencing hearing. The jury or the court may consider all
- 18 the evidence introduced at the trial stage of the proceedings, together
- 19 with new evidence presented at the sentencing hearing. The court shall
- 20 instruct the jury concerning the statutory penalties for murder and any
- 21 other offenses for which the defendant was convicted, the potential for
- 22 consecutive or concurrent sentencing, and the availability of good time
- 23 credit and clemency. The defendant may present any additional
- 24 evidence relevant to:
- 25 (1) the aggravating circumstances alleged; or
- 26 (2) any of the mitigating circumstances listed in subsection (c).
- 27 (e) Except as provided by IC 35-36-9, if the hearing is by jury, the
- 28 jury shall recommend to the court whether the death penalty or life
- 29 imprisonment without parole, or neither, should be imposed. The jury
- 30 may recommend:
- 31 (1) the death penalty; or
- 32 (2) life imprisonment without parole;
- 33 only if it makes the findings described in subsection (k). The court shall
- 34 make the final determination of the sentence, after considering the
- 35 jury's recommendation, and the sentence shall be based on the same
- 36 standards that the jury was required to consider. The court is not bound
- 37 by the jury's recommendation. In making the final determination of the
- 38 sentence after receiving the jury's recommendation, the court **may shall**
- 39 receive evidence of the crime's impact on members of the victim's
- 40 family.
- 41 (f) If a jury is unable to agree on a sentence recommendation after
- 42 reasonable deliberations, the court shall discharge the jury and proceed

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as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

- (1) sentence the defendant to death; or
- (2) impose a term of life imprisonment without parole; only if it makes the findings described in subsection (k).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

- (1) conviction or sentence was in violation of the:
 - (A) Constitution of the State of Indiana; or
 - (B) Constitution of the United States;
- (2) sentencing court was without jurisdiction to impose a sentence; and
- (3) sentence:
 - (A) exceeds the maximum sentence authorized by law; or
 - (B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a

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- 1 new date to carry out the defendant's execution.
- 2 (k) Before a sentence may be imposed under this section, the jury,
- 3 in a proceeding under subsection (e), or the court, in a proceeding
- 4 under subsection (g), must find that:
- 5 (1) the state has proved beyond a reasonable doubt that at least
- 6 one (1) of the aggravating circumstances listed in subsection (b)
- 7 exists; and
- 8 (2) any mitigating circumstances that exist are outweighed by the
- 9 aggravating circumstance or circumstances.

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